

United States District Court

Southern District of Texas

Case Number: 05cv1847

ATTACHMENT

Description:

- State Court Record State Court Record Continued
- Administrative Record
- Document continued - Part 11 of _____
- Exhibit to: _____
number(s) / letter(s) _____

Other: _____

1 A. He does his own visits with him also.

2 Q. So it's not like you are the only
3 person that's seeing him?

4 A. That's right.

5 Q. What about the other people on the
6 treatment team, are they seeing him too?

7 A. Yes, ma'am.

8 Q. What you do, you get together and
9 compare what you saw with what Dr. Arfa saw,
10 what the nurses saw with what the other person
11 saw?

12 A. Yes.

13 Q. So if you saw one thing, they saw
14 something else, you talk about them?

15 A. Yes.

16 Q. Why do you all use a team instead of
17 just Doctor Arfa?

18 A. Just gives us a better opportunity to
19 provide a more accurate diagnosis as well as be
20 more specific on what a consumer needs as far as
21 treatment.

22 Q. You said how many people were on each
23 team?

24 A. At that time, there is the
25 psychiatrists, two caseworkers, a psychologist,

1 and R.N. and residential specialist who comes in
2 occasionally.

3 Q. Five to six people on the team?

4 A. Yes.

5 Q. So, five heads are better than one?

6 A. That's correct.

7 Q. All right. Now, let's talk about
8 March the third, that discharge. Who was on the
9 team when that discharge diagnosis was made?

10 A. Was still Doctor Arfa.

11 Q. Doctor Arfa. Okay. Does the same
12 thing hold true that, let's say Doctor Arfa
13 would have his own visits with Mr. Eldridge?

14 A. Yes.

15 Q. Then a nurse would go in and see Mr.
16 Eldridge?

17 A. Yes.

18 Q. And the other people on the team would
19 go in and see Mr. Eldridge?

20 A. Yes.

21 Q. Were the five people together with Mr.
22 Eldridge, or would they each have independant
23 visits with Mr. Eldridge?

24 A. There were sometimes when we were all
25 together, sometimes where they had individual

1 visits with him.

2 Q. Let me turn your attention now to
3 October, which is I think the first date we have
4 there on those diagrams.

5 A. Uh-hum.

6 Q. And what I want to do is just go
7 through the dates the way we've gone through the
8 January and I think it was February dates of
9 '93. When was the first time in October that
10 you saw Mr. Eldridge?

11 A. October the 7th of 1993.

12 Q. All right. And what was that visit
13 like?

14 A. His symptoms were still very vague.
15 His appearance, he was kept in appearance,
16 wasn't anything that -- didn't appear to be
17 disheveled or anything, appeared to taking care
18 of his hygiene. I asked him about taking the
19 MMPI II again, he says he couldn't read. So
20 that was basically it.

21 Q. Up on that chart we have: Vague
22 symptoms, he said he couldn't read, you
23 suspected malingering?

24 A. Yes, ma'am.

25 Q. Did you write that down in the

1 documents?

2 A. Yes, ma'am.

3 Q. And that you couldn't do the M.M.P.I.
4 because he said he couldn't read?

5 A. That's correct.

6 Q. Why did you suspect malingering at
7 that point?

8 A. Again, this is history on the unit
9 after meeting with him, his inconsistent
10 symptoms, also noticing that the only time he
11 would present these symptoms was when he was in
12 front of me or with the treatment team. When
13 he'd go back in the cell, he would be sitting
14 down just like you are; but, when he was with me
15 or the treatment team, he would present symptoms
16 that appeared to be of a psychotic nature.

17 Q. Can you pull the microphone up just a
18 little bit?

19 A. Yeah.

20 Q. All right. So why do you think that
21 that's a sign of malingering that somebody is
22 acting out. Is that your terminology, acting
23 out when they're with mental health people but
24 they're pretty calm when they're not?

25 A. Well, it's exaggerated symptoms.

1 Presenting symptoms that aren't really there.
2 But people who are mentally ill, they're
3 consistent in their symptoms. I mean, they're
4 crazy with me but they're also crazy when they
5 go back in their cell. They continue to be
6 dishevelled or, you know, disruptive or
7 hallucinating. That was stopped when he wasn't
8 in front of me or in front of the treatment
9 team. There were times when I'd walk into the
10 cell to visit other consumers, I would see him
11 sitting on his bed, lying down, and he was
12 fine. And, then, he wasn't that way when he was
13 with me or with the treatment team.

14 Q. When you saw him on October the 7th of
15 '93, was he stuttering? That first time in
16 October of '93?

17 A. No.

18 Q. So that went away?

19 A. Yes.

20 Q. Was he acting paranoid?

21 A. No, ma'am.

22 Q. That went away?

23 A. Yes, ma'am.

24 Q. Was he talking about seeing his son?

25 A. No, ma'am.

1 Q. That went away; is that right?

2 A. That's right.

3 Q. How is it that you determined that he
4 couldn't see or he couldn't do the M.M.P.I. on
5 October 7th of 1993?

6 A. Well, that's just what he told me,
7 that he couldn't do it because he couldn't read.

8 Q. I'm sorry?

9 A. He told me he couldn't do it because
10 he couldn't read, so that's just what I got
11 down.

12 Q. The next date that we see there on the
13 board is October the 14th of 1993.

14 A. Yes.

15 Q. And there the summary says he was
16 agitated, yelling, he had acting out behavior,
17 there is no evidence of psychosis, you
18 recommended GP. What is GP?

19 A. General population.

20 Q. What do you mean by -- describe to me,
21 when you use the words agitated, yelling and
22 acting out behavior, tell me the details of the
23 conduct.

24 A. All right. Well, acting out behavior
25 is anybody can act out. Somebody can get upset

1 and hit somebody, somebody can get upset and
2 yell at somebody, use profane words. There is a
3 difference between acting out behavior when
4 someone is agitated and psychotic behavior,
5 which could be delusional behavior, paranoid
6 behavior, so on.

7 Q. Okay. You said there was no evidence
8 of psychosis. What would be evidence of
9 psychosis?

10 A. Evidence of psychosis would be that he
11 wasn't goal directed or his thought processes
12 weren't connected but he was yelling, he was
13 yelling at staff, he was agitated, he was goal
14 directed in his thought process as he was doing
15 that.

16 Q. So it seemed like he knew what he was
17 talking about?

18 A. That's correct.

19 Q. You try to see if what they're saying
20 makes sense?

21 A. That's correct.

22 Q. Although he was yelling, what he was
23 yelling made sense?

24 A. That's correct.

25 Q. The next time you saw him I think on

1 the board is October the 21st, 1993; is that
2 right?

3 A. October the 21st, yes.

4 Q. There you say again no psychotic
5 behavior, that he was selectively mute and
6 groomed and kept in appearance; is that right?

7 A. Yes.

8 Q. Why do you use the word selectively
9 mute?

10 A. Selectively mute is when someone
11 chooses to be that way.

12 Q. He had the ability to talk?

13 A. Yes. Or when somebody, when I ask
14 them a question, and they might have been
15 talking before, but if I ask them a specific
16 question, they don't say anything. They don't
17 say anything when asked a question.

18 Q. And he had the ability to talk based
19 on your past experience?

20 A. That's correct.

21 Q. He just was not talking?

22 A. That's correct.

23 Q. The next date on the board, these are
24 about week intervals. You were seeing him about
25 once a week?

1 A. Yes, ma'am.

2 Q. Were other people seeing him on
3 different days?

4 A. Yes.

5 Q. You each were assigned a day, I guess?

6 A. We're not assigned. Basically when we
7 can do it on the week, the specific week. We
8 are not assigned days, we do it as we have time.

9 Q. October the 28th, 1993. Again, no
10 psychotic behavior. But then you say
11 exaggerative bizarre behavior; what do you mean
12 by that?

13 A. That he is exaggerating bizarre
14 behavior.

15 Q. What's the difference between that and
16 psychotic behavior?

17 A. Bizarre behavior I guess would be
18 behavior that's not, that isn't just like
19 somebody who is organized and put together, is
20 in control, but behavior that is just different,
21 very exaggerated in what he would do. His
22 behavior was more like a performance than
23 somebody who has, you know, a legitimate
24 disorder, mental disorder.

25 Q. Can you give me an example of what you

1 meant by that?

2 A. Yes. There's several times when he
3 would do a lot of crying. Again, that would
4 disappear when he would go back to his dorm.
5 The suspicious looking around, just like he was
6 afraid of people. I know one specific time he
7 was presenting that, and within that same hour
8 he was calling for a parole visit and he was
9 able to walk through the hallway with other
10 inmates, other staff persons without any problem
11 at all, and I observed that.

12 MS. CRAWFORD: Excuse me, Your Honor.

13 May I approach the bench?

14 THE COURT: Yes, ma'am.

15 (Off the record bench conference held
16 at this time).

17 THE COURT: Members of the jury, would
18 y'all please step back into the jury room for
19 just a few moments.

20 (The jury is removed from the
21 courtroom).

22 MR. HILL: Judge, the witness just
23 mentioned that in the course of discussing a
24 treatment plan or discussing things with Mr.
25 Eldridge that at one point he requested a -- I'm

1 not sure what his exact phraseology was -- a
2 parole visit or parole hearing? Maybe I could
3 get the witness to recite because I don't have
4 the exact phraseology.

5 A. He was told that there was -- he was
6 told that there was a--

7 THE COURT: You can go ahead, use the
8 microphone.

9 A. That he had a parole visit.

10 VOIR DIRE EXAMINATION

11 BY MR. HILL:

12 Q. Of course this is a point in time when
13 you're still of the belief that he was
14 malingering; correct?

15 A. That's correct.

16 Q. So you felt as though at the time that
17 you were telling him that he had a parole visit?

18 A. Oh, no, I didn't tell him that.

19 Q. Who told?

20 A. He was told that by the residential
21 specialist.

22 Q. Okay.

23 MR. HILL: Why, in light of the
24 precautions that we have taken previously to
25 avoid mentioning the type of case that Mr.

1 Eldridge is charged with, the fact that we have
2 attempted to avoid the reference of any prior
3 convictions, at this point the witness has
4 essentially let the cat out of the bag by
5 mentioning that he was on some sort of parole so
6 they would know at this point that he had been
7 previously convicted, although they don't know
8 of what type of offense. And, as a result of
9 that, we feel that the comment made in the
10 presence of this jury will violate our client's
11 rights. And I have several bases for that.
12 Like to read them into the record if I may. I
13 believe it's a violation of the fifth, sixth,
14 eighth, and fourteenth amendments to the United
15 States Constitution as well as Art. 1, Sec. 10,
16 13, 15, 19 of the Texas Constitution.

17 Once again, we're going to urge that
18 the court discharge the jury, declare a mistrial
19 because we don't believe that any instructions
20 that the court could give at this point in time
21 could cure the error that has been caused as a
22 result of this witness' recital of the fact that
23 the defendant was receiving a parole visitor or
24 parole hearing. To ask the court to instruct
25 the jury to disregard it only compounds the

1 problem. We would object to the recitation by
2 this witness of the word parole, parole hearing,
3 or whatever other reference he made, move the
4 court for mistrial at this time.

5 THE COURT: Denied. Ready for the
6 jury.

7 MS. ALCALA: Only thing I was going to
8 say really I had trouble hearing that he even
9 said parole. I'm not entirely sure.

10 THE COURT: I heard it.

11 MS. ALCALA: I don't know if said
12 parole or Perot.

13 THE COURT: All right, well, he is not
14 asking for instructions to disregard. I just
15 deny the motion for mistrial.

16 MR. SMYTH: He said Ross Perot.

17 MS. ALCALA: Another thing, really,
18 there might be some type of hearing in a mental
19 health situation or something like that. I'm
20 not sure that necessarily had to do with prior
21 conviction or some other type of parole.

22 MR. HILL: To clear up the record,
23 judge, we'll ask the court to go ahead and give
24 an admonishment or instruction to disregard any
25 prior statement that the witness made. And then

1 I would ask, in the event that the court should
2 admonish the jury accordingly, since the jury is
3 out right now, not to compound the problem
4 further, I would then move for mistrial again at
5 that time.

6 THE COURT: All right, I will not
7 require you to move for mistrial again. I'll
8 instruct the jury to disregard the last
9 statement by the witness.

10 MR. HILL: Understanding if the court
11 does in fact instruct them as you have
12 indicated, that immediately following that I
13 would be lodging or requesting a motion for
14 mistrial.

15 THE COURT: I won't require you to do
16 that in front of the jury.

17 MS. ALCALA: Luis, nothing about prior
18 trips to the pen, parole, current charge,
19 victims, nothing.

20 THE WITNESS: Okay.

21 MS. ALCALA: If you think it might
22 hurt me, don't say it. I mean, even if you're
23 questionable about it, don't say it. If it's
24 borderline, don't say it.

25 THE WITNESS: Okay, I understand.

1 MS. ALCALA: We just have to be very
2 careful.

3 MR. SMYTH: Nothing about Ross Perot
4 again.

5 (Jury present and testimony continued
6 as follows).

7 THE COURT: Members of the jury, I'll
8 instruct you all to disregard the last statement
9 by the witness.

10 You may proceed.

11 BY MS. ALCALA:

12 Q. Sir, I think we were talking about
13 October 28th; is that right?

14 A. That's correct.

15 Q. Just to speed this up a little bit,
16 let's go on to November the 4th of 1993. There
17 you say he was not psychotic but presenting
18 symptoms for secondary gain. What kind of
19 symptoms was he presenting?

20 A. Well, first he said that he was not
21 hearing or seeing things, then he stated that he
22 had a visit with his brother, that he had been
23 to his brother's house, telling me that he was
24 basically seeing things and hearing things after
25 he just told me that he wasn't.

1 Q. Did you ask him to describe that
2 hallucination?

3 A. This particular hallucination I didn't
4 ask him to describe.

5 Q. Okay. Let's go to December 2nd,
6 1993. You said he is making poor attempt to
7 exaggerate psychopathology, then mentioned
8 something about difficult childhood. Tell me
9 about that visit.

10 A. This is when? December 2nd?

11 Q. December 2nd, 1993.

12 A. Again, he verbalized having a
13 difficult childhood and being the youngest and
14 having other brothers and being picked on.
15 Again I felt it was a poor attempt to exaggerate
16 the symptoms.

17 Q. Why did you find it peculiar, if you
18 did, that he could remember things about having
19 a troubled childhood but couldn't remember other
20 information?

21 A. Well, if somebody has an intact
22 memory, usually they're, especially relating to
23 things of the past, are usually able to remember
24 not just one of them but particular events. I
25 know that he at one time couldn't remember, or

1 he had told me he couldn't remember who his
2 father was, and when I asked him if he had any
3 brothers he said yes and he told me their
4 names. And I just found that to be questionable
5 for somebody who can't remember their father but
6 they're able to remember their brothers and the
7 names of their brothers.

8 Q. What is the term selective memory?

9 A. Selective memory is remembering only
10 those things that someone chooses to remember,
11 which is different from selectively mute.

12 Q. Did he have selective memory?

13 A. I think he did, yes. I think he chose
14 to remember those things that he wanted us to
15 know about.

16 Q. So he could tell you about a difficult
17 childhood but couldn't tell you when he was
18 born?

19 A. Right.

20 Q. Or his brothers' names or?

21 A. No, he did know his brothers' names.

22 Q. But not his father's name?

23 A. Yes.

24 Q. Let's go to the next sheet, which is
25 December the 8th. There you say that he is

1 exaggerating the symptoms and that he is
2 manipulative, and then you talk about having an
3 auditory and visual hallucination as you
4 talked.

5 A. That's correct.

6 Q. First, did you ask him if he was
7 having hallucinations?

8 A. Yes.

9 Q. Would you always ask him if he was
10 having hallucinations or had been having
11 hallucinations?

12 A. Most of the time, I would.

13 Q. So, if it's not otherwise mentioned,
14 he wasn't having hallucinations?

15 A. That's correct.

16 Q. This particular time he was?

17 A. Yes.

18 Q. All right. Did he tell you what his
19 hallucination was about?

20 A. Yes, he did.

21 Q. What did he tell you?

22 A. He told me that he was able --

23 Q. Pull up the microphone.

24 A. He told me he was able to see his
25 brother and him loading a truck and speaking to

1 his brother as he spoke to me and he was looking
2 down at the floor, was almost like he was
3 watching television, like he was watching this
4 happen. I felt that, well, first of all, it's
5 very rare, it's very rare for people to have
6 auditory and visual hallucinations at the same
7 time. The other is, that when someone is
8 experiencing the auditory and visual
9 hallucination at separate times or at the same
10 time, they're very disorganized, in severe
11 distress. And his thought processes were very
12 organized, goal directed, able to answer my
13 questions. When I asked him to describe this
14 hallucination, he described it in detail, which,
15 when someone is experiencing those type of
16 hallucinations, they're usually extremely
17 disorganized and severely distressed at that
18 time.

19 Q. Was he describing his hallucinations
20 in full sentences?

21 A. Yes, ma'am.

22 Q. And in detail?

23 A. Yes, ma'am.

24 Q. What did he tell you him and his
25 brother were doing?

1 A. That he could see him and his brother
2 loading a truck.

3 Q. Do you remember what he said they were
4 loading it with?

5 A. No, but I remember asking him if he
6 could tell me more. He was saying there was
7 people around. I kept saying, "Well, tell me
8 more." He said, "I can't, they're going too
9 fast." I said, "Well, it's real important that
10 I know these things." And, when I asked him to
11 tell me more, I got the sense that he couldn't
12 come up with things fast enough to tell me so he
13 said he couldn't do it. But he was extremely
14 goal directed. For somebody who is that
15 psychotic to be able to be that goal directed
16 and answer my questions and know where to go
17 with them, that's something that I thought was
18 very, as an example of how I thought he was
19 exaggerating those symptoms.

20 Q. That didn't match, that he could talk
21 with clear sentences but also have these
22 hallucinations?

23 A. And he was sitting down in a chair and
24 telling me. He was calm as he was telling me,
25 he was not distressed.

1 Q. Like you and I are right now?

2 A. That's correct.

3 Q. When patients have these types of
4 hallucinations, first, have you talked to
5 patients that have had hallucinations?

6 A. Yes, ma'am.

7 Q. What's your experience with patients
8 who do have hallucinations, or you believe are
9 having real hallucinations?

10 A. People who are mentally ill, when
11 they're having hallucinations they can tell you
12 I'm hearing things or perhaps seeing things, and
13 they can tell you that's what's going on. Most
14 of them are not able to give a detailed account
15 of how it's happening because it's too scary,
16 it's too threatening. They can go on and say I
17 need my medication, such and such medication, I
18 need my Haldon or Haldol. Mr. Eldridge
19 performed his symptoms, which is very typical of
20 people who are malingering. He was never on any
21 medication. And then these symptoms disappeared
22 as soon as he would leave me. And people who
23 are mentally ill and not on medication, they get
24 worse, they don't get better, or they just don't
25 stop, they need their medication.

1 Q. Is an hallucination a clear vision
2 like tv or not?

3 A. No, ma'am. Most of the time they're
4 very vague hallucinations.

5 Q. Like a fog?

6 A. They're like a fog.

7 Q. You wouldn't see like somebody loading
8 a truck?

9 A. You would not see somebody loading a
10 truck. You might see a ghost or something.

11 Q. Okay. So what would be an example of
12 a hallucination that a true psychotic patient has?

13 A. I'm seeing ghosts, I'm seeing spirits,
14 I'm seeing clouds, I'm seeing visions. They're
15 explained in those terms.

16 Q. But not, you know --

17 A. Not in that detail, no, ma'am.

18 Q. And not so clear that two people are
19 actually physically doing things?

20 A. That's correct. Not able to be as
21 goal directed, you know, follow exactly what I'm
22 asking him, be able to answer appropriately and
23 also be sitting down the way he was sitting
24 down, explaining this to me. It's too
25 confusing. Most people who are that psychotic

1 would not be able to do that.

2 Q. Okay. Let me talk about December the
3 9th, 1993. There you use the same words you
4 used before: Dramatic, theatrical,
5 manipulative. Pretty strong words.

6 A. Yeah.

7 Q. I guess you agree with that?

8 A. Yeah.

9 Q. Why do you choose such strong words
10 like those?

11 A. Because that's the appearance that he
12 gave, that he was, it was a drama, it was more
13 of a performance than what I'm going through
14 right now, that he performed. Some of them were
15 -- at that particular point, he even laughed
16 himself because it was almost funny for him.

17 Q. What do you mean he laughed himself?

18 A. He just sort of smiled as if to laugh
19 at himself while he was doing that.

20 Q. Do you remember what he was doing?

21 A. Yes, ma'am.

22 Q. What was he doing?

23 A. He came in, he said that he was having
24 stomach problems. At that point he was sitting
25 down and he leaned over and he expelled gas and

1 he started to laugh.

2 Q. So he knew what he was doing?

3 A. Yes, ma'am.

4 Q. Then--

5 A. And he said, "You see?" I didn't say
6 anything, I just continued to ask him to
7 continue with his hallucinations, so.

8 Q. Okay. All right. So he said he was
9 hallucinating at the time?

10 A. Uh-hum.

11 Q. Did he tell you at that time what he
12 was seeing?

13 A. It's the same time when he was telling
14 me about he and his brother loading a truck.

15 Q. They were still loading the same truck?

16 A. Yes, ma'am.

17 Q. So he was still visually as clear as
18 he was the day before?

19 A. That's the same note. I had just
20 made -- I made two notes. I made a note in the
21 group therapy note and the note in my progress
22 note, so it's the same incident.

23 Q. Okay. Let's talk about the next time,
24 December 15th, 1993. There you say that he was
25 vague and had no psychosis present. What does

1 that mean? December 15th.

2 A. I have this: Appears to be no
3 psychosis.

4 Q. Why would you write something like
5 that down?

6 A. Because he responded to his name. He
7 gave no specific symptoms, he was vague, but
8 otherwise he was maintaining, and he did not
9 appear to be psychotic.

10 Q. What about on December the 29th, 1993,
11 what was he like then?

12 A. December the 29th? I had attempted
13 once again to administer the M.M.P.I. II, and he
14 told me that he needed his glasses, and that he
15 couldn't read. I attempted to administer the
16 M.M.P.I. II by asking him the questions instead
17 of having him read them, and he would ask a
18 question almost with every statement that I
19 made, and it was impossible for me to complete
20 the assessment. It's a five hundred seventy
21 item questionnaire, and usually you don't do
22 that, so it just became very difficult for me to
23 administer that many questions.

24 Q. So you would ask him the question
25 orally because he said he couldn't see because

1 he didn't have glasses, he couldn't read?

2 A. Yes, ma'am.

3 Q. When you would ask the question
4 orally, what would he do?

5 A. He would just ask another question.

6 An example that I documented was the very first
7 question, which is: Do you enjoy reading
8 mechanics magazines? He said, "Well, what does
9 mechanics mean?" That type of thing. So, with
10 every statement, there was a question, and it
11 just went on that way. So at that point I
12 decided, after so many items that I had asked
13 him, repeatedly there was always a question
14 after the statement or question that I asked, I
15 decided just to discontinue the assessment.

16 Q. So he was not going to be tested?

17 A. That's correct.

18 Q. All right. Then we look to January
19 the 6th of 1994. Same thing as before, but you
20 say he was hallucinating again as you spoke.
21 What was that hallucination about?

22 A. He stated he could see demons flying.
23 He described the demons as being white, having
24 wings, flying around the room, snatching people.

25 Q. Like tv?

1 A. That's correct.

2 Q. Was that typical of somebody who is
3 having a genuine hallucination, based on your
4 experience with people who are having
5 hallucinations?

6 A. No, ma'am.

7 Q. When he was describing the
8 hallucination to you, what was he like?

9 A. He was very clear, he was organized,
10 his thought processes were goal directed, I
11 mean, he was going somewhere with them, wasn't
12 just loose and different concepts coming out, I
13 mean, he was organized in telling me what his
14 hallucinations were like.

15 Q. Were you having a conversation like
16 we're having right now?

17 A. Yes, ma'am.

18 Q. What about, then, January 10, 1994?
19 What happened during that visit?

20 A. He told me sometimes he sees a
21 werewolf chasing him.

22 Q. What else did he say?

23 A. He remained very vague about some of
24 his history. He was able to remember emotional
25 and physical abuse of his father, and he reports

1 that his father would say to him that he would
2 never amount to anything, that he ran away
3 several times, had to be brought back by the
4 police.

5 Q. What about that? Was he able to give
6 you information about something like that, that
7 I guess, would help, might help him if somebody
8 believed he had been a child abuse victim? What
9 was unusual or peculiar about that?

10 A. Well, what was unusual about it was
11 that he wasn't able to remember certain --
12 because earlier I had asked him about his, just
13 his, in general, his history. I also asked him
14 about his criminal history. He became very
15 vague, but he was able to tell me about being
16 emotional and physically abused by his father
17 and also having run away several times, having
18 to be brought back by the police. And that day
19 he also reported feeling better.

20 Q. Did he, at that point, admit to you
21 that he knew who his mother was?

22 A. No, not that I see in here.

23 Q. I mean, was it selective memory in
24 that he could remember childhood problems but
25 couldn't remember, for example, his mother's

1 name, father's name, brother's name?

2 A. I don't remember if I asked him about
3 his mother.

4 Q. But that was inconsistent with what he
5 told you before?

6 A. Yes.

7 Q. Sir, let me ask you. You said that
8 Doctor Arfa was the one who, was the doctor that
9 signed off on the discharge on January the 14th
10 of '93 and on March the third of 1993; is that
11 right?

12 A. Yes, ma'am.

13 Q. And Doctor Arfa no longer works for
14 MHMRA; is that correct?

15 A. That's correct.

16 Q. Where does he work?

17 A. He works for the Dallas jail.

18 Q. He moved away?

19 A. Yes.

20 Q. Okay. The person who discharged him,
21 well, when was he discharged after January 10,
22 1994?

23 A. I don't remember the date he was
24 discharged. I think it was sometime around the
25 14th.

1 Q. Of January or February?

2 A. I don't remember. I don't have it
3 here.

4 Q. What does your note reflect on January
5 the 10th as to where he was moved to?

6 A. I don't have it in my notes.

7 Q. Okay. All right. The last time,
8 though, that you had contact with him was
9 January 10th of 1994?

10 A. Yes.

11 Q. All right. Who were the doctors who
12 were assigned to the team from January 7th of
13 '93 up until January the 10th of '94?

14 A. It was Doctor Arfa; after Doctor Arfa,
15 it was Doctor Stokes, then from Doctor Stokes it
16 was Melissa Ferguson. After Ferguson, it was
17 Doctor Robashkin.

18 Q. And, again, same thing. That
19 different people on the team would go in and see
20 him at different times?

21 A. Yes.

22 Q. Y'all would get together, compare
23 notes?

24 A. Yes.

25 Q. Make a joint decision?

1 A. Yes, we would.

2 Q. Have there been times that you came to
3 a different diagnosis than let's say the
4 psychiatrist on the team?

5 A. Yes, ma'am.

6 Q. And what would you all do to work that
7 out?

8 A. Well, we would either observe the
9 inmate for a longer period of time, we would
10 administer certain assessments, we would
11 basically just try to come to some consensus as
12 to what might be going on with the inmate.

13 Q. So you don't always agree with them;
14 they don't always agree with you?

15 A. That's correct.

16 MS. ALCALA: I'll pass the witness.

17 THE COURT: Y'all approach the bench.

18 (Off the record bench conference held
19 at this time).

20 THE COURT: Please proceed.

21

22

23

24

25

CROSS EXAMINATION

BY MR. HILL:

Q. Mr. Pena, so that I understand correctly, when there is disagreement among the various members of the team, you still all come to a consensus, anyway.

A. Yes.

Q. So you could have -- I don't want to say rival factions, but have somebody saying this, somebody saying that, y'all are going to get together and agree on what you're going to say?

A. Eventually we try to come to a consensus, yes.

Q. So let me clarify some things, first of all. I did approach you in the hallway this afternoon at approximately 3:15; correct?

A. Yes.

Q. I did identify myself as Wayne Hill,
one of the attorneys for Gerald Eldridge; correct?

A. Yes.

Q. You knew that Gerald Eldridge was the individual that you were going to be testifying about this afternoon?

A. Yes, sir.

1 Q. And at that time, when I attempted to
2 discuss with you your role as a potential
3 witness, you indicated that you did not feel
4 comfortable visiting further with me; correct?

5 A. Not in those words.

6 Q. Did you discuss Mr. Eldridge's case
7 with me at that time?

8 A. No, sir.

9 Q. Did you indicate that you would like
10 to visit with Ms. Aleala, the assistant district
11 attorney prosecuting the case, before deciding
12 whether you would talk to me other than in the
13 courtroom?

14 A. That's not what I said to you, sir.

15 Q. All right. I'm asking you did you
16 indicate, that in the absence of her giving you
17 permission to talk to me, that you would not
18 talk to me out in the hallway?

19 A. That's not what I said.

20 Q. Did you talk with me out in the
21 hallway?

22 A. Yes, sir, I did.

23 Q. Did you talk to me about Gerald
24 Eldridge when I started asking you about his
25 case and how he had behaved while he was in the

1 jail?

2 A. Yes, sir.

3 Q. You did?

4 A. Yes, sir.

5 Q. What did you tell me?

6 A. You had asked me how long do people
7 stay on the unit.

8 Q. How long people stay in the unit?

9 A. Yes, sir.

10 Q. I had gotten to the point of asking
11 you how long Gerald Eldridge stayed on the unit?

12 A. Right.

13 Q. Kind of a general question?

14 A. General question.

15 Q. You responded to that question?

16 A. Yes.

17 Q. What else did you tell me?

18 A. You had asked me about if I had worked
19 with Gerald Eldridge you said on daily basis or
20 weekly basis.

21 Q. Correct. Your response?

22 A. My response was on weekly basis.

23 Q. Then what was said?

24 A. Then you had asked me -- I don't
25 remember the next question.

1 Q. Okay. Was it roughly at that point
2 that you indicated that you were a little uneasy
3 talking with me?

4 A. I said I was uncomfortable, that I
5 didn't know whether I should be talking with you.

6 Q. Okay.

7 A. That's what I said.

8 Q. What did you mention about talking
9 with Ms. Aleala?

10 A. I said I was asked to be here by Elsa
11 and that I didn't know whether I was doing
12 something that I shouldn't be doing, that I
13 would answer any questions that you had in the
14 courtroom.

15 Q. Okay.

16 A. That's what I said.

17 Q. Okay. Also, let's back up a little
18 bit. In terms of your qualification.

19 A. Yes.

20 Q. If you were in a private setting right
21 now, you would be, if you were in a
22 psychologist, a Ph.D. level psychologist's
23 office, you would be referred to as a
24 psychological associate; is that correct?

25 A. No, sir.

1 Q. All right. Are you telling the jury
2 that a person that has a master's degree can
3 hold themselves out in a private setting, not in
4 an exempt setting as a psychologist or
5 psychological associate?

6 A. No.

7 Q. Which?

8 A. You can't either one. When you have a
9 master's degree, on the outside you cannot use
10 the words psychology or psychological,
11 psychological services, psychologist anywhere on
12 your card, in your statements or anything.

13 Q. You can't hold yourself out to the
14 general public in a private setting as a
15 psychologist?

16 A. That's correct. I cannot.

17 Q. Okay. Yet, in the jail where you
18 work, that setting is exempt?

19 A. Yes, sir.

20 Q. From the licensing requirement that
21 would otherwise apply to private psychologists?

22 A. Yes, sir.

23 Q. So you don't have to meet the same
24 standards to hold yourself out as psychologist
25 if you work in the jail as you would if you were

1 in a private setting?

2 A. That's correct.

3 Q. So you come into court and hold
4 yourself out, in fact, you have referred to
5 yourself as a psychologist?

6 A. That's correct.

7 Q. Tell me, if you will, the first
8 contact that you had with Gerald Eldridge was on
9 January 7th of 1993; correct?

10 A. Yes, sir.

11 Q. Are you the first individual from the
12 team that met with him?

13 A. I don't know that. I don't remember.

14 Q. But you were the one that was
15 basically going to conduct the assessment; is
16 that a correct statement?

17 A. Yes, sir.

18 Q. Where does it go from the assessment
19 portion to what is the next step after you had
20 made your assessment?

21 A. After I made my assessment, he would
22 either stay on the unit and continue through,
23 well, no, from there the treatment team decides
24 on what to do with him -- he would either stay
25 on the unit and receive services or he would go

1 to general population.

2 Q. All right. And tell me how long does
3 your assessment take? In particular, how long
4 did your assessment of Gerald Eldridge take on
5 January 7 of 1993?

6 A. My interview with him, I don't
7 remember how long that took. I don't remember
8 how long that took.

9 Q. Are the notes that you have been
10 referring to, which are summarized on the
11 exhibits introduced by the State, the only notes
12 that you would have taken?

13 A. No, sir.

14 Q. Did you have like rough notes that you
15 prepared?

16 A. Yes.

17 Q. What happens to those rough notes?

18 A. I usually just put them away or --
19 they're my own personal notes, I'll tear them
20 up, throw them away.

21 Q. Okay. So then are there any lasting
22 records of the actual interview notes that you
23 conducted in this case?

24 A. No, sir.

25 Q. How about on any of the other dates

1 that you met with Gerald Eldridge?

2 A. No, sir.

3 Q. So what we have is a summarization of
4 what you engaged in with Mr. Eldridge on any of
5 the given dates that we're talking about?

6 A. That's what you have.

7 Q. You mentioned that when you -- let me
8 ask you this. How long after you have a
9 meeting, whether it be an assessment or one of
10 these contacts that you have with the
11 individual, how long after that do you actually
12 prepare your summary or your report?

13 A. Sometimes it's immediately after,
14 sometimes it's the next morning.

15 Q. Okay. So sometimes there could be a
16 lapse of time in between?

17 A. Usually the very next morning.

18 Q. Would there be more information on the
19 original notes than what are reflected on the
20 summary information that's on the report?

21 A. Typically, no.

22 Q. You mentioned that when you sit down
23 with an individual you said sometimes you did
24 take notes?

25 A. Yes.

1 Q. You recall saying that?

2 A. Yes.

3 Q. Are there other times you just sit
4 without pen or pencil in hand and notepad, that
5 you just converse with the individual?

6 A. Yes, sir.

7 Q. Is it your decision to determine what
8 is noteworthy and what is not noteworthy?

9 A. Yes, sir.

10 Q. So you can't tell me or the jury what
11 items, during this year of contact with Mr.
12 Eldridge, what was non-noteworthy; can you?

13 A. I can't tell you what items were -- I
14 am sorry, could you repeat that?

15 Q. Kind of like a double negative. You
16 only put down what you thought was noteworthy;
17 right?

18 A. I put down my clinical assessment on
19 the notes.

20 Q. Okay. Listen to my question; okay?
21 During direct examination, you stated that
22 things that you thought were important or
23 noteworthy you would write down; correct?

24 A. Uh-hum.

25 Q. So would that necessarily mean that